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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, Chairman, State Tax Commission of Mississippi

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSISSIPPI

STATEMENT AS TO JURISDICTION

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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 37,960

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION,

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC.

DIVISION B

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Rules of the Supreme Court of the United States as amended, plaintiff-appellant submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the Judgment of the Supreme Court of the State of Mississippi entered in this cause.

Opinion Below

The opinion of the Supreme Court of the State of Mississippi in this case is reported — So. page —, a copy of the opinion of the Supreme Court of Mississippi is hereto attached as Appendix "1" to this statement.

Jurisdiction

The judgment of the Supreme Court of the State of Mississippi was entered on June 11, 1951, the plaintiff-appellants suggestion of Error was overruled July 13, 1951, a petition for appeal to the Supreme Court of the United

States presented to the presiding judge of the Supreme Court of the State of Mississippi, Division B thereof, to-wit, on the 20 day of July, 1951. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is confirmed by Title 28, United States Code, Section 1257 (a).

The following decisions sustain jurisdiction of the Supreme Court of the United States to review the judgment on direct appeal in this case.

Nippert v. *City of Richmond*, 327 U. S., 416, 90 L. Ed. 760;

Davis v. *Virginia*, 236 U. S. 697, 59 L. Ed. 795;

Caldwell v. *State of North Carolina*, 187 U. S. 622, 47 L. Ed. 336;

Dozier v. *State of Alabama*, 218 U. S. 124, 54 L. Ed. 695;

Craig v. *Mills*, 33 So. (2d) 801, 203 Miss. 692;

Crutcher v. *Kentucky* (1891), 141 U. S. 47, 35 L. Ed. 649;

Webber v. *Virginia* (1880), 103 U. S. 34, 26 L. Ed. 565;

Robbins v. *Tax District of Shelby County*, (Tenn.) 120 U. S. 489, 30 L. Ed. 964;

William G. Asher v. *State of Texas*, 128 U. S. 129, 32 L. Ed. 368;

International Textbook Co. v. *Pigg*, 217 U. S. 91, 54 L. Ed. 678;

Spector Motor Service, Inc., v. *O'Connor, Tax Commissioner*, 95 L. Ed. Advance Sheets, page 435.

The Precise Question Involved

The questions involved in this case and presented to the court for its decision are as to whether or not paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944, violate Article I, Paragraph (3), Section (8) of the Constitution of the United States providing that Con-

gress shall have power to regulate commerce with foreign nations and among the several states and with the Indian Tribes, and as to whether or not such paragraphs of Section 45 Violate Section (1) of the 14th Amendment to the Constitution of the United States providing that no state shall deprive any persons of life, liberty and property without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

The Supreme Court of Mississippi held that the sections were valid and did not violate either the commerce clause or the 14th Amendment to the Constitution of the United States.

The Questions Involved Are Substantial

Statement

The facts in the case appear from the pleadings and are undisputed. Upon the 9th day of March, 1950, the Memphis Steam Laundry Cleaner, Inc. exhibited its declaration in the Circuit Court, First Judicial District, Hinds County, Mississippi (R. 2-5.[1]). The appellant's declaration alleged that it is a foreign corporation organized under the laws of the State of Delaware and is engaged in operating a steam laundry and cleaner. Having received applications from persons in the State of Mississippi for its service, it sends trucks into the State of Mississippi soliciting laundry and cleaning service. It at no time had an office, place of business, agents, employees or officers in the State of Mississippi. That it solicits and renders service to people in Mississippi in ten counties immediately adjoining the City of Memphis by sending trucks through municipalities situated in said counties. The drivers of said trucks have no authority other than to solicit laundry for transportation from persons desiring such service, to be transported to appellant's plant in Memphis, Tenn., and such com-

modities, as are delivered to its truck drivers are brought to Memphis, serviced and returned to the owners thereof in the State of Mississippi, whereupon the truck driver collects a reasonable charge for such service upon the delivery of the Commodity in the State of Miss. no part of which service is rendered in the State of Miss., all of which is had in Memphis, in the State of Tenn. The appellant sent ten trucks into the State of Miss. whereupon the appellee, A. H. Stone, Chairman of the State Tax Commission demanded of appellant the sum of $50.00 per annum upon the driver of each truck soliciting laundry to be transported to Memphis, Tenn. for the purposes aforesaid. That the appellee threatened to attach the property of the appellant and have its truck drivers arrested and criminally prosecuted unless the tax should be paid (R. 2-3): That said tax was demanded under paragraph (t) and (y) Section 45, Chapter 138, Miss. Laws of 1944 which levied a tax upon a person soliciting business for a laundry not licensed in the State, said subdivision (t) being in the following language:

> "Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00

In Paragraph (y) Section 45, the following provision is contained:

> "Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

A copy of Section 45, Mississippi Laws of 1944 is hereto attached and made Appendix (2) to this statement. That by reason thereof, since the appellant sent ten trucks in the counties in the State of Mississippi continuous to Memphis, Tennessee, a tax of $50.00 on each truck or

$500.00 per annum was demanded. The appellant alleged that it was not liable for such tax, first because its activities were in interstate commerce and not subject to local taxation. Second, it alleged that it was not liable because Chapter 137 Section 110, Mississippi Laws of 1944, imposed a tax of only eight dollars ($8.00) upon each truck rendering the same service for laundry located in the State of Mississippi, said Section 110, containing the following language:

> "Upon each person operating a laundry other than a hand laundry, as follows:
>
> | | |
> |---|---|
> | In municipalities of class 1 | $120.00 |
> | In municipalities of class 2 | $ 80.00 |
> | In municipalities of class 3 and 4 | $ 60.00 |
> | In municipalities of classes, 5, 6, 7 and elsewhere in the county | $ 32.00 |
> | Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located | $ 8.00" |

A copy of said Chapter 137 Section 110, Mississippi Laws of 1944 is made Appendix "3" to this statement. The appellant alleged and averred that subdivisions (t) and (y) Section 45, Mississippi Laws of 1944 create a discrimination between intrastate and interstate commerce and therefore said sections (t) and (y) are void and unenforceable and the tax was not collected.

Third, the appellant alleged and averred that on account of such discrimination as between laundry located out of the State of Mississippi and domestic laundry (Sections (t) and (y) of the Section 45 of the Mississippi Laws of 1944 violate the Fourteenth Amendment to the Constitution of the United States in that by reason of such discrimination deprived the appellant of its property without process of law and denied to it equal protection. R. 3, 4, and 5.

The appellant alleged that while it was not liable to the State of Mississippi for taxes by reason of the interstate nature of its transactions, the appellant paid to the proper taxing authorities required of a domestic corporation under Section 110, Chapter 137, Mississippi Laws of 1944 the sum of eight dollars ($8.00) on each truck. r-5. The declaration alleged that the plaintiff paid the tax of five hundred dollars ($500.00), fifty dollars ($50.00) on each of ten trucks in order to prevent the arrest of its agents and servants coming in the State of Mississippi for interstate purposes and the seizure of its trucks. Judgment was prayed for in the sum of five hundred dollars ($500.00). The appellee filed an answer to the appellants declaration. r-6-10. There was no denial on the part of appellee of any facts alleged in the plaintiffs' declaration. The case was tried before the Circuit Judge upon the undenied facts contained in appellants declaration with the result that upon the 20th day of June, 1950 judgment was rendered in favor of the appellant against the appellee for the sum demanded. The trial court held that the appellants activities were interstate in character and rendered a judgment in appellants favor for the sum of five hundred dollars ($500.00). r-11. The appellee prosecuted an appeal to the Supreme Court of Mississippi and upon the 11th day of June, 1951 the Supreme Court of Mississippi reversed the decision of the trial court, held that the activities of the appellant were not in interstate commerce, were local in nature, were free from discrimination, reversed the judgment of the lower court and entered a final judgment dismissing appellants declaration. The Court in doing so assumed as true the facts alleged in appellants declaration and stated herein. This appeal is from the judgment of the Supreme Court of Mississippi reversing the judgment of the trial court.

ARGUMENT

Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 are void as a tax upon interstate commerce and in addition constitute a discriminatory tax as between interstate and intrastate commerce in that the operator of a truck serving a domestic laundry, regardless of the distance traversed would only be subject to a tax of $8.00 per truck.

Therefore, it necessarily appears that the statutes in question violate both the interstate commerce clause of the Constitution of the United States and the 14th Amendment of the Constitution of the United States and that the appellant is deprived of his property without due process and is denied equal protection under the law.

The questions are fairly and fully presented in appellant's declaration filed in the state court. R. 3, 4, and 5 contains the following language:

The Question How Presented

"2. If mistaken therein, the plaintiff alleges that such tax is void, unenforceable and uncollectible in that the soliciting and transportation of commodities to Memphis, Tennessee to the plaintiff's plant to be laundered and cleaned and returned to the owner is interstate commerce and not subject to tax under the laws of the State of Mississippi, and therefore, such tax is void and unenforceable.

3. Plaintiff alleges and avers that it does not owe said tax or any part thereof; that the said tax is void, unenforceable and collectible in that under Paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944, there is levied and demanded of plaintiff a tax of $50.00 upon each individual person in charge of plaintiff's trucks per annum in each of the aforesaid counties; that, however, under Section 110, CH. 127, Mississippi laws of 1944, the tax would be only

$8.00 upon each truck or other vehicle in each county where the same might be operated other than that in which the laundry is located: That is to say that there is demanded and required of the plaintiff a tax of $50.00 per annum for each truck soliciting laundry in the State of Mississippi in each county where said laundry is solicited; whereas a person situated in the State of Mississippi, soliciting laundry in the State of Mississippi from any municipality where a laundry is not located is only liable for a tax of $8.00. The plaintiff shows unto the Court that said act is void and unenforceable as being in violation of the interstate commerce clause of the Constitution of the United States in that said act creates discrimination between the solicitation of laundry in interstate commerce and the solicitation of laundry in intrastate commerce; that on account of said discrimination said act violates the 14th Amendment to the Constitution of the United States in that the same, by reason of such discrimination, deprives the plaintiff of its property without due process of law and denies to it the equal protection of the law, and for all of said reasons said statute violates the 14th section of the Bill of Rights of the State of Mississippi; that the discrimination complained of is substantial and unreasonable; that the difference between the soliciting and transporting of laundry in intrastate commerce and that of soliciting for transportation in interstate commerce is an unreasonable classification and rests upon no sound basis and may not be sustained."

The opinion of the Supreme Court of Mississippi expressly recognizes that the appellant challenged the constitutionality of Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944 as being violative of the interstate commerce clause of the Constitution of the United States and that the appellant challenged said subdivisions of Section 45 Mississippi Laws of 1944 as creating a discrimination in favor of intrastate commerce

as against interstate commerce, thereby violating interstate commerce clause of the Constitution of the United States, as well as the 14th Amendment of the Constitution of the United States in the particulars mentioned and the decisions of the court was in favor of the validity of the Mississippi statutes thus challenged and an express denial of the appellant's contentions.

The question is, therefore, squarely presented as to whether or not the activities of the appellant in the State of Mississippi constituted interstate commerce and as to whether or not Paragraphs (t) and (y) Section 45, Chapter 138, Mississippi Laws of 1944, and Section 110, Chapter 137, Mississippi Laws of 1944, discriminate against interstate commerce and violate the 14th Amendment to the Constitution of the United States. The court held that the appellant was liable for the tax provided under Paragraphs (t) and (y) of the act and dismissed the appellant's suit to recover the tax, which it would otherwise have been entitled to recover if the appellant's contentions in respect to the unconstitutionality of the acts involved are correct.

The following authorities establish that the tax which the appellant was required to pay was a direct burden upon interstate commerce and a discrimination between interstate and domestic commerce.

The latest opinion from the Supreme Court of the United States is that of Spector Motor Service, Inc., v. O'Connor, Tax Commissioner, decided March 26, 1951, and found in 95 L. ed. Ad. Sheets, page 435. In that case it appeared that the appellant was engaged in interstate transportation through the state of Connecticut. It was authorized so to do by the Interstate Commerce Commission and the Connecticut Utilities Commission. It had filed a certified copy of its Charter with the Secretary of State of the State of Connecticut, appointed an agent for service of process. It did no intrastate business in Connecticut. It would

transport interstate shipment into Connecticut, pick up property in Connecticut for interstate shipment. The Supreme Court of Connecticut held that it was subject to the same franchise of being engaged in intrastate commerce. The Supreme Court of the United States held otherwise, reversed the judgment of the Supreme Court of Connecticut, using the following language:

> "Taxing power inherent in sovereign states, yet the states of the United States have divided their taxing power between the Federal Government and themselves. They delegated to the United States the exclusive power to tax the privilege to engage in interstate commerce, when they gave Congress the power 'to regulate Commerce with foreign Nations and among the several states' . . . U. S. Const. Art. 1, Sec. 8, Cl. 3. While the reach of the reserved taxing power of a state is great, the constitutional separation of the federal and state powers makes it essential that no state be permitted to exercise without authority from Congress those functions which it has delegated exclusively to Congress . . . "
>
> "This Court heretofore has struck down, under the commerce cause, state taxes upon the privilege of carrying on a business that was exclusively interstate in character. The constitutional infirmity of such a tax persists no matter how fairly it is apportioned to business done within the State. Alpha Portland Cement Co. v. Mass., 268 U. S. 203, 69 L. ed. 916, 45 S. Ct. 477, 44 ALR 1219 (measured by percentages of 'corporate excess' and net income); Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 69 L. ed. 439 St. Ct. 184 (measured by percentage of capital stock and surplus)."

In the case of *Nippert* v. *City of Richmond*, 327 U. S. 416, 90 L. ed. 760, an ordinance of the City of Richmond laid a tax upon persons soliciting orders for merchandise to be shipped from out of the state. No separate tax was laid

in respect to intrastate business. The Supreme Court of the United States held that the tax was illegal using the following language:

> "The tax here in question inherently involved too many probabilities, and we think actualities for exclusion of or discrimination against interstate commerce, in favor of local competing business, to be sustained in any application substantially similar to the present one. Whether or not it was so intended, those are its necessary effects. Indeed, in view of that fact, and others of common knowledge, we cannot be unmindful, as our predecessors were not when they struck down the drummer taxes, that these ordinances lend themselves peculiarly to creating those very consequences or that in fact this is often if not always the object of the local commercial influences which induce their adoption. Provincial interests and local political power are at their maximum weight in bringing about acceptance of this type of legislation. With the forces behind it, this is the very kind of barrier the commerce clause was put in the fundamental law to guard against * * *".

The case of *Best & Co. v. Maxwell*, 311 U. S. 454, 85 L. ed. 275, is directly in point. In that case the appellant, a New York retail merchant displayed samples in a hotel room in North Carolina, taking orders for goods corresponding to the samples to be filled by shipping direct to the customer from New York City. The appellant was obliged to pay a tax of $250 levied on every person or corporation not a retail merchant in the state displaying samples in any hotel room rented or occupied temporarily for the purpose of securing retail orders. The appellant was not a regular retail merchant and paid the tax under protest and sued to recover same asserting that the act was unconstitutional. Recovery was held in the trial court which the Supreme Court of North Carolina reversed. In reversing

the judgment of the Supreme Court of North Carolina, the Supreme Court of the United States used the following language:

> "The only corresponding fixed-sum license tax to which appellant's real competitors are subject is a tax of $1 per annum for the privilege of doing business. Nonresidents wishing to display their wares must either establish themselves as regular North Carolina retail merchants at prohibitive expense, or else pay this $250 tax that bears no relations to actual, probably sales but must be paid in advance no matter how small the sales turn out to be. Interstate commerce can hardly survive in so hostile an atmosphere. A $250 investment in advance, required of out-of-state retailers but not of their real local competitors, can operate only to discourage and hinder the appearance of interstate commerce in the North Carolina retail market. Extra-state merchants would be compelled to turn over their North Carolina trade to regular local merchants selling by sample. North Carolina regular retail merchants would benefit, but to the same extent the commerce of the Nation would suffer discrimination.
>
> The freedom of commerce which allows the merchants of each state a regional or national market for their goods is not to be fettered by legislation, the actual effect of which is to discriminate in favor of intrastate businesses, whatever may be the ostensible reach of the language.
>
> Judgment reversed".

The case of *Breenon* v. *City of Titusville*, 153 U. S. 289, 38 L. ed. 719, is directly in point.

In the case of *Crenshaw* v. *State of Arkansas*, 227 U. S. 389, 57 L. ed. 565, the appellants, Crenshaw and Galloway were convicted under statutes of the State of Arkansas which imposed a tax of $200 for selling or peddling samples for ranges, and took orders therefor, Crenshaw acted as delivery man, delivered ranges to persons who had pre-

viously given orders. The appellants were convicted for not having purchased a license and were held by the Supreme Court of the State of Arkansas to be peddlers. The Supreme Court of the United States in reviewing the case cited with approval *Robbins* v. *Taxing District*, 30 L. ed. 694, 120 U. S. 489; *Brennon* v. *Titusville*, 153 U. S. 289, 38 L. ed. 719; *Caldwell* v. *North Carolina*, 187 U. S. 22, 47 L. ed. 336; *Rearick* v. *Pa.*, 203 U. S. 507, 51 L. ed. 295; *Dozier* v. *Alabama*, 218 U. S. 124, 54 L. Ed. 965.

The language used by the Supreme Court of the United States is applicable here because the Supreme Court of Mississippi held that the business of the appellant in coming into Mississippi and soliciting laundry to be taken out of the state for servicing was peddling.

The Court used the followng language:

> "In the Emert case, therefore, there was no movement of goods in interstate commerce because of orders taken for their sale, but the specific articles carried about by the peddler and none other were sold and delivered by him. In the majority opinion of the Supreme Court of Arkansas the definition of hawkers and peddlers, as understood at common law, was recognized—as one who goes from house to house or place to place, carrying his merchandise with him, which he concurrently sells and delivers (2 Bouvier's Law Dict. 642) but it was said that the Legislature of Arkansas might define the word 'peddler' so as to include such as traveled from place to place and took orders for goods from other states, and that such persons, because of the statute declaring them so, were peddlers, and liable to be taxed under the lawful exercise of the police power of the state. We must look, however, to the substance of things, not the names by which they are labeled, particularly in dealing with rights created and conserved by the Federal Constitution in the decisions of this court. At common law and under the statutes which have been sustained concerning peddlers,

they are such as travel from place to place, selling the goods carried about with them; not such as to take orders for the delivery of goods to be shipped in the course of commerce. Here, as the facts show, the sample ranges carried about from place to place were not sold. Orders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them. Business of this character, as well settled by the decisions of this Court, constitutes interstate commerce, and the privilege of doing it cannot be taxed by the state". * * *

In the case of *Davis* v. *Virginia*, 236 U. S. 697, 59 L. ed. 795, the appellant solicited orders on blanks furnished by his employer for the taking of portraits, sending them out of the state, and redelivering the same in an appropriate frame. The contract therefor was signed in the state, sale made in the state, but the service contracted for was performed entirely out of the State. The Supreme Court of the United States held that the contract was interstate commerce and not subject to taxation, using the following language:

"The court below thought that the purchase of the frames was to be regarded as a separate transaction occurring wholly in Virginia. Whether or not this was its technical aspect as an executed contract, it often has been pointed out that commerce among the states is a practical, not a technical, conception. The preliminary contract bound the company to furnish a chance to take a frame with the portrait. Obviously it was contemplated that the frame would be sent from New York as well as the pictures, as in practice they were, and although the bargain was not complete until the company's offer was accepted in Virginia the furnishing of the opportunity was a part of the interstate transaction. From the point of view of commerce the

business was one affair. *Dozier* v. *Alabama*, 218 U. S. 124, 54 L. ed. 965: 28 LRA (N.S.) 264, 30 St. Ct. Rep. 649: Crenshaw v. Arkansas, 227 U. S. 387, 57 L. ed. 565, 33 S. ct. Rep. 294: Browning v. Waycross, 233 U. S. 16, 21, 58, L. ed. 828, 34 Sup. Ct. Rep. 578".

Judgment reversed".

In the case of *Caldwell* v. *State of North Carolina*, 187 U. S. 622, 47 L. ed. 336, the Supreme Court of the United States held to the same effect.

"An ordinance under which a license fee may be required for an agent of a nonresident portrait company, who requires from such company pictures and frames manufactured by it to fill orders previously obtained, and after breaking bulk and placing each picture in the frame designed for it, delivers them to the respective purchasers, is invalid as an attempt to interfere with and regulate interstate commerce".

In the case of *Dozier* v. *State of Alabama*, 218 U. S. 124, 54 L. ed. 965, a solicitor for a nonresident crayon company solicited the taking of photographs to be sent to another state for reframing and returned for a cash consideration. The solicitor was convicted under the state law and on appeal to the Supreme Court of the United States the judgment was reversed the court holding that the transaction was interstate commerce, using the following language:

"We are of the opinion that the sale of the frames cannot be so separated from the rest of the dealing between the Chicago Company and the Alabama purchaser as to sustain the license tax upon it. Under the decisions, the statute, as applied to this case, is a regulation of commerce among the states, and void under the Constitution of the United States, Art. 1. Section 8: Robbins v. Taxing Dist. 120 U. S. 489, 30 L. ed. 794: 1 Inters Com. Rep 45. 7 S. Ct. Rep. 592: Caldwell v. North Carolina, 187 US 622, 47 L ed. 326, 23 S Ct. Rep. 229;

Rearick v. Pa. 203 US 507, 51 L ed. 295, 27 S Ct. Rep. 159".

In the case of *Crutcher* v. *Kentucky*, (1891) 141 U. S. 47, 35 L. ed, the court used the following language:

> "We have repeatedly decided that a state law is unconstitutional and void which requires a party to take out license for carrying on interstate commerce no matter how specious the pretext may be for imposing it".

In the case of *Welton* v. *State of Mo.* (1875) 91 U. S. 275, 23 L. ed. 347, The Supreme Court held that a state was without authority to provide a license fee for the solicitation of merchandise to be shipped from without a state.

> "The power of the state to exact a license tax of any amount being admitted, no authority would remain in the United States or in this court to control its action however unreasonable or oppres-ive. Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discrimination State legislation, favorable to the interests of one state and injurious to the interests of other states and counties, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States".

In the case of *Webber* v. *Virginia*, (1880) 103 U. S. 344, 26 L. ed. 565, there was involved a Virginia statute requiring agents for the sale of articles manufactured in other states to obtain a license and pay a tax in each county where he might sell, or offer to sell his goods. No such license was required of agents for domestic goods. The court in striking down the act used the following language:

> "Here there is a clear discrimination in favor of home manufacturers and against the manufacturers of other states".

The original case upon the subject is *Robbins v. Tax District of Shelby County (Tenn.)*, 120 U. S. 489, 30 L. ed. 694. There was a tax imposed upon persons solicitating the sale of merchandise to be shipped from out of the state into the state. Appellant solicited sales of merchandise in the City of Memphis for commodities to be shipped from out of the state, was arrested and convicted, his conviction was affirmed by the Supreme Court of Tennessee and was appealed to the Supreme Court of the United States, which reversed the judgment. The Court used the following language:

> "It would not be difficult, however, to show that the tax authorized by the State of Tennessee in the present case is discriminative against the merchants and manufacturers of other states. They can only sell their goods in Memphis by the employment of drummers and by means of samples; whilst the merchants and manufacturers of Memphis, having regular licensed houses of business there, have no occasion for such agents, and if they had, they are not subject to any tax therefor. They are taxed for their licensed houses, it is true; but so, it is presumable, are the merchants and manufacturers of other states in the places where they reside; and the tax on drummers operates greatly to their disadvantage in comparison with the merchants and manufacturers of Memphis * * *"
>
> "To say that the tax, if invalid as against drummers from other States, operates as a discrimination against the drummers of Tennessee, against whom it is conceded to be valid, is no argument; because the state is not bound to tax its own drummers; and if it does so whilst having no power to tax those of other states, it acts of its own free will, and is itself the author of such discrimination. As before said, the state may tax its own internal commerce; BUT THAT DOES NOT GIVE IT ANY RIGHT TO TAX INTERSTATE COMMERCE".
>
> "The judgment of the Supreme Court of Tennessee

is reversed and the plaintiff in error must be discharged".

In the case of *William G. Asher* v. *State of Texas*, 128 U. S. 129, 32 L. ed. 368, an effort was made to have the Supreme Court of the United States overrule the case of *Robbins* v. *Shelby County*, last referred to, under the same state of facts.

The Supreme Court of the United States used the following language:

> "But it is strenously contended by that court that the decision of this ourt in Robbins v. Shelby Taxing District is contrary to sound principles of constitutionally construction and in conflict with well adjudicated cases formerly decided by this court and not overruled. Even if it were true that the decision referred to was not in harmony with some of the previous decisions, we had supposed that a later decision in conflict with prior ones had the effect to overrule them, whether mentioned and commented on or not. And as to the constitutional principles involved, our views were quite fully and carefully, if not clearly and satisfactorily expressed in the Robbins case. We do not propose to enter upon a renewed discussion of the subject at this time".

A very illustrative case is that of *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 54 L. ed. 678. In that case it appeared that the International Textbook Company from Scranton, Pa., conducted a correspondence school from which it taught selected courses in literature, arithmetic, science, and other questions. It solicited the sale of its system by correspondence by solicitation through agents. It sent an agent into the State of Kansas who secured a contract from a man by the name of Pigg to take the correspondence course of the appellant. The appellee, however, refused to pay for the services. Suit was brought in

the state court Kansas against the appellee for breach of contract. Appellee pleaded that the appellant was a foreign corporation; that it had not filed a copy of its charter with the Secretary of State of the State of Kansas, and therefore, was prohibited from maintaining any suit in the state court. Recovery was denied in the state court of Kansas and the Supreme Court of the United States held that the appellant was engaged in interstate commerce although it sent soliciting agents into the state who had procured the contract sued for. That is to say, in sending a representative into the state to solicit the sale of its services and procuring a contract, the appellant was not engaged in a local activity but was engaged in interstate commerce.

In reversing the judgment, the Supreme Court used the following language:

> "To carry on interstate commerce is not a franchise or privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities as a matter of convenience in carrying on their business cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject. Again, in the same case: 'would anyone pretend that a state legislature could prohibit a foreign corporation, an English or French transportation company—for instance—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? and why not? Evidently because the matter is not within the province of state legislation".

Mississippi is profiting very greatly by reason of the advantages of trade afforded under the interstate com-

merce clause of the Constitution of the United States. The most extensive seafood industry in the world is maintained on the Mississippi coast solely and exclusively by virtue of the protection of the interstate commerce clause of the Constitution of the United States under the interpretation of the Supreme Court of the United States. *Foster Fountain Packing Co.* v. *Haydel,* 278 U. S. 1, 73 L. ed. 149, 49 S. Ct. 1. Farmers in Southern Mississippi furnish the City of New Orleans, Louisiana, as well as the city of Memphis, Tenn. with milk. During the present year an effort was made by the farmers in the State of Louisiana to prohibit the shipment of milk from the state of Mississippi into Louisiana. The officials of the State of Mississippi properly availed themselves of the rights of farmers in Mississippi under the commerce clause of the Constitution of the United States. They invoked successfully the case of *Hood* v. *DuMond,* 336 U. S. 525, 93 L. ed. 865, and a more recent case of *Dean Milk Co.* v. *Madison,* decided Dec. 7, 1950, reported Vol. 95, Lawyers Advance Sheets, Supreme Court of the United States at page 228.

The furnaces in the steel mills of Birmingham, Ala. are heated by gas piped in interstate commerce from gas fields in Mississippi to the city of Birmingham, a right protected under the commerce clause of the Constitution of the United States as construed by the Supreme Court of the United States, *Pa.* v. *West Va.,* 262 U. S. 553 67 L. ed. 1117, 32ALR 300.

The Supreme Court of Mississippi predicated its opinion in the present case on the opinion of this court in *Craig* v. *Mills,* 33 So. (2d) 801, 203 Miss. 693. In that case the appellee was engaged in two occupations in the State of Mississippi. Its employees would take photographs in the state of persons and send them out of the state for enlargement. The Court held that the taking of the photographs

in the state to be sent beyond the limits of the state for enlargement was a local activity basing its conclusions on the following cases:

Brown Foreman Co. v. *Kentucky*, 217 U. S. 563, 54 L. ed. 883. In that case the court decided that an act of the Legislature of Kentucky imposing a tax upon the business of compounding, rectifying and blending distilled spirits did not violate the 14th Amendment to the Constitution of the United States.

In the case of *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165 76 L. ed. 1038 the court held that the generation of electricity was a local activity subject to the tax although the electricity generated afterwards passed in interstate commerce.

In the case of *Cloverdale* v. *Ark-La Pipeline Co.*, 303 U. S. 604, 82 L. ed. 1043, the court held that a statute imposing a privilege tax upon the production of mechanical power was a valid tax, was a local activity and not in interference with interstate commerce.

In the case of *Joseph D. McGoldrick* v. *Berwind-White Coal Mine Company*, 309 U. S. 833, 84 L. ed. 565, the appellant being engaged in business in New York City entered into a contract for the purchase of coal to be shipped in interstate commerce to the appellee in New York City. The delivery of the coal and vesting of title took place in New York City where the contract for the purchase thereof was made. This court held that a sales tax thereupon was not a burden upon interstate commerce. Domestic commerce was subject to the same tax and the tax was laid upon every purchaser, within the state, of goods for consummation regardless of whether they had been transported in interstate commerce. The opinion, however, contained the

following observation which is applicable to the present case:

> "Forms of state taxation whose tendency is to prohibit the commerce or place it at a disadvantage as compared or in competition with intrastate commerce and any state tax which discriminates against the commerce, are familiar examples of the exercise of state taxing power in an unconstitutional manner, because of its obvious regulatory effect upon commerce between the states."

The court in its opinion, in this case, however, completely overlooked the fact that it held that persons merely soliciting photographs to be taken out of the state for enlargement were not subject to the tax. The court used the following language:

> "The business of taking and developing photographs is a specialized calling, trade or profession, and we are of the opinion that under the facts alleged in the bill of complaint the employees of the appellees in this state, other than the photographer, are neither taking nor developing photographs, and that, therefore, the appellees are liable only for the payment of the privilege tax on behalf of their photographer who is engaged in the local activity of taking pictures in this state" (P. 707) 203 Miss.

The court expressly held that the tax collector should be enjoined from attempting to collect the tax if the persons merely solicited photographs to be sent out of the state for enlargement as to which the court used the following language:

> "It should be noted that the reasoning of the case of Nippert v. City of Richmond, 327 U. S. 416, 66 S. Ct. 586, 90 L. Ed. 760, 162 ALR 844, furnishes a strong argument in favor of the contention of the appellees on the question of whether or not the tax in question violates the Commerce Clause in the Federal Constitution

except for the fact that in that case the tax is upon the act of soliciting in one state in behalf of the seller in another state, instead of being a tax upon a local activity in the taxing state which constitutes the original, basic and essential step in the manufacture of the article to be sold.

"From the foregoing facts it would follow that the statute as hereinbefore construed is neither unreasonable and discriminatory nor in violation of the commerce clause or any other provision of the Federal Constitution" (p. 714) 203 Miss.

The court held that the taking of photographs in the state to be sent out of the state for enlargement or development was a local activity subject to tax but the mere solicitation of photographs to be sent out of the state for enlargement was not a local activity and not subject to tax.

The Court completely overlooked the vital distinction in this case that the mere soliciting of laundry to be taken out of the state for service was not a local activity but interstate commerce and upon such distinction this case turns.

We call attention to the fact that in the present instance, interstate commerce is bearing its share of the burden, paying $8.00 per truck in each county, the same liability imposed upon resident citizens.

It has done this regardless of liability therefor and we call Your Honors' attention to the opinion of the Attorney General of Mississippi in which opinion it is stated that if a nonresident laundry paid the local tax of $8.00 being the same paid by a resident, no greater burden could be imposed on it. See appendix 4.

The State Tax Commission followed the opinion of the Attorney General up until recently.

The state courts have uniformly held that the solicitation of laundry to be taken from one state into another is interstate commerce.

The Supreme Court of Kansas so held in the case of *Kansas City* v. *Seaman*, 160 Pac. 1139.

The same was held in an appellate court in the State of New York, *People* v. *Vechion*, 276 N. Y. S. 705.

The Supreme Court of Kansas reached a same conclusion in *Comm.* v. *Pearl Laundry Co.*, 105 Kentucky 259, 49 S. W. 36.

From the foregoing it necessarily appears that the imposition of the tax was violative of the interstate commerce clause of the Constitution of the United States not only because interstate activities and commerce is not subject to taxation by the state, but because interstate commerce was discriminated against in that a citizen of the state might perform the same service for a laundry situated within the state upon payment of a tax of $8.00 that is to say, a laundry situated in the state might send trucks 200 miles, upon the payment of $8.00 to each county, whereas the appellee was prohibited from engaging in an interstate transaction in the mere outskirts of Memphis except upon the payment of $50.00 in each county.

This question needs no further argument.

The Question of Violating the Equality Clause and the Due Process Clause of the Constitution of the United States.

It is very true that taxing statutes in dealing with the equality clause are subject to classification, but that does not mean that one tax may be imposed upon a resident, and a different tax imposed on a nonresident, for engaging in the same activity, and the authorities cited by appellant's counsel do not support this rule.

It is conceded in this case that there is demanded of the appellant a tax of $50.00 upon each truck, whereas the representative of a laundry from the most remote county in

Mississippi could exercise the same privilege by paying $8.00, in each county.

Counsel cites the case of *Caskey Baking Co. v. Virginia*, 313 U. S. 117, 85 L. Ed. 1222.

In that case, a nonresident of the State of Virginia, by means of a truck transported bread into the State of Virginia and made sales of bread to persons desiring to buy the same from the truck.

The court justified a different privilege tax upon that occupation from a wholesale merchant doing business in the state.

The court, speaking through Mr. Justice Roberts, in sustaining the Act, used the following language:

> "While the transportation of bread across the State line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business of peddling is what the Act hits, and this irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its bakery were situate in Virginia the appellant would have the benefit of this exemption and since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination, but the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State, or buy or procure them from extra-state sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions."

But no question of commerce was involved in that case. The question was one of classification as applied to intrastate commerce. Exactly the opposite is presented here.

The following authorities are directly in point.

A statute providing a higher tax for a nonresident than a resident in carrying on the same business violates the 14th Amendment to the Constitution of the United States. *Frost* v. *Corporation Commission*, 278 U. S. 515, 73 L. Ed. 483; *Mayflower Farmers* v. *Teneyck*, 297 U. S. 266, 80 L. Ed. 265; *F. S. Royster Guano* v. *Virginia*, 253 U. S. 412, 64 L. Ed. 989; *Hartford Boiler Insurance Company* v. *Howerton*, 301 U. S. 459, 81 L. Ed. 1223; *Maxwell* v. *Bugbee*, 250 U. S. 525, 63 L. Ed. 1124; *Hayes* v. *Missouri*, 120 U. S. 68, 30 L. Ed. 578.

In the case of *Bethlehem Motors Corporation* v. *George W. Flynt, et al.*, 256 U. S. 421, 65 L. Ed. 1029, the court held that a statute of the State of North Carolina violated both the 14th Amendment to the Constitution of the United States and of the Interstate Commission Laws where statute required a tax of $3000.00 for the sale of automobiles unless the manufacturer had three-fourths of its capital invested in the state, in which event the tax was only $500.00.

See *I. M. Darnell* v. *Memphis*, 52 L. Ed. 413. In the case of *Ward* v. *Maryland*, 12 Wall. 418, 20 L. Ed. 449, the court held that a state statute prohibits the sale within a certain district of the state articles other than agricultural products and articles manufactured in the state by persons not residents of the state without first obtaining a license and paying therefor was violating the Constitution. See also *Sully* v. *American National Bank*, 178 U. S. 289, 44 L. Ed. 1072. See also *Chalker* v. *Birmingham Railroad Company*, 249 U. S. 522, 63 L. Ed. 740; *Power Manufacturing Company* v. *Saunders*, 274 U. S. 490, 81 L. Ed. 1165; *Hanover Fire Insurance Company* v. *Harding*, 272 U. S. 494, 71 L. Ed. 372,

49 A. L. R. 713; *Baltic Mining Co.* v. *Mass.*, 58 L. Ed. 127.

We call the Court's attention to the official opinion of the Attorney General of the State of Mississippi of August 1, 1940, advising the appellee in this case that no discrimination could be had between a resident or nonresident laundry. The Attorney General seemed to be of the opinion that a nonresident laundry should bear its proportionate part of the burden and advised the State Tax Commission that if the nonresident laundry paid the $8.00 per truck no further tax should be required.

A copy of this opinion is hereto attached as Appendix 4.

The appellant has acquiesced in the opinion of the Attorney General of Mississippi and paid $8.00 on each truck and will continue to do so. The appellee is unwilling to abide by the opinion of the Attorney General of Mississippi.

We first respectfully submit that Paragraphs (t) and (y) of Section 45, Chapter 138, Mississippi Laws of 1944 violate the interstate commerce clause of the Constitution of the United States.

Second, we further submit that the mere solicitation of laundry to be taken out of the state for service with no part thereof performed in Mississippi is not a local activity.

Third, we submit for the reasons hereinbefore set out that the provisions of the statute aforesaid violate Section (1) of the 14th Amendment to the Constitution of the United States.

It is respectfully submitted that the questions presented by your appellant are substantial and of public importance; that the judgment rendered by the Supreme Court of the State of Mississippi appealed from should be reversed.

C. E. Clifton,
Memphis, Tenn.
Wm. H. Watkins,
Counsel for Memphis Steam Laundry Cleaner, Inc., Plaintiff-appellant.

APPENDIX 1

IN THE SUPREME COURT OF MISSISSIPPI

No. 37,960

(OPINION RENDERED JUNE 11, 1951)

DIVISION B

A. H. STONE, Chairman, State Tax Commission

vs.

MEMPHIS STEAM LAUNDRY CLEANER, INC., ARRINGTON, C.

This suit was filed by the appellee, Memphis Steam Laundry Cleaner, Inc., a foreign corporation located in Memphis, Tennessee, to recover $500.00 for privilege taxes previouly paid by it to A. H. Stone, Chairman State Tax Commission of the State of Mississippi. The suit was tried by the lower court on declaration and answer and judgment rendered for appellee, from which judgment the appellant appeals.

It is admitted that the appellee was sending ten trucks into eight counties in Mississippi soliciting laundry, which it carried to Memphis, serviced and returned, and upon which a privilege tax of $50.00 was paid on the driver of each truck. This appeal involves the construction of Section 45, subsections (t) and (y), Chapter 138, Laws of Mississippi of 1944, known as the state-wide privilege tax law. Section 3 of this act provides:

> "Every person desiring to engage in any business, or exercise any privilege hereafter specified shall first, before commencing same, apply for, pay for, and procure from the state tax commissioner or commissioner of insurance, a privilege license authorizing him to engage in the business or exercise the privilege specified therein, and the amount of tax shown in the following sections is hereby imposed for the privilege of engaging or continuing in the business set out therein."

Section 45 of said act provides:

"Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

. . . (t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county . . . $50.00

. . . (y) Provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business."

The appellee contends that it is not liable for the tax on the following grounds:

"Point I. Neither the appellee nor the drivers of its trucks were transient vendors or dealers under Paragraphs (t) and (y), Section 45, Mississippi Laws of 1944, as defined in said act. If the paragraphs of said statute or either of them shall be construed and enforced in this case as to render the appellee liable for the tax sought to be recovered in this case, the said paragraphs and each of them violate the interstate commerce clause of the Constitution of the United States because the appellee and its agents and servants were engaged solely In Interstate Commerce and Said Paragraphs and each of them discriminate against interstate commerce in that under Section 110, Chapter 137, Mississippi Laws of 1944, a tax of only $8.00 would be imposed upon a truck operating exclusively in the State of Mississippi.

"Point II. Paragraphs (t) and (y). Section 45, Chapter 138, Mississippi Laws of 1944, if construed as to impose liability on the appellee in this case, violate the 14th Amendment to the Constitution of the United States in that the appellee would thereby be denied the equal protection of the law, as well as due process.

and for the same reason said paragraphs and each of them, would violate the 14th Section of the Bill of Rights of the State of Mississippi."

We are of the opinion that there is no merit in the contention that the appellee is not liable for the tax for the reason at its drivers are not transient vendors or dealers, Section 110 of Chapter 137, Laws of Mississippi 1944, local rivilege Tax Law, for the benefit of counties and municilities, provides:

"Laundries, Sec. 110, Upon each person operating a laundry other than a hand laundry as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	80.00
In municipalities of classes 3 and 4	60.00
In municipalities of classes 5, 6, 7 and elsewhere in the county	32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	8.00"

The appellee contends that by reason of the above section, hich permits resident and licensed laundries to operate truck in a municipality other than where the laundry is cated by paying a tax of $8.00, and requiring it to pay a x of $50.00, discriminates against interstate commerce. he legislature, in making this classification which is reanable, no doubt took into consideration the fact that local undries were required to pay ad valorem, privilege, and any other taxes. The tax involved here is not a tax on terstate commerce, but a tax on a person soliciting busiss for a laundry not licensed in this state, a local activity hich applies to residents and non-residents alike.

In the case of Craig v. Mills, 203 Miss. 692, 33 So. 2d 801, hich case involved privilege taxes and where similar estions were involved, the Court said:

"From its very nature the business of taking photographs is essentially localized in character. The customer, the photograph and the camera used by him

must of necessity be in the state where the photograph is taken. Moreover the tax is not laid upon the transmission of the exposed negative from Mississippi to Tuscaloosa, Alabama, in the instant case; nor upon the return of the finished product to the customer in interstate commerce. It is levied upon the local activity of taking photographs in this state which are to be thereafter developed outside of the state. The interstate commerce does not begin until after the work of the photographer in taking the negative is completed. The taking of such negative is not Commerce, but is merely a step in the preparation therefor and which is taken by one engaged in a particular calling or profession in this state. . . . . As supporting the view that such a tax may be imposed upon the business of the appellees, in so far as the local activity of appellees' photographer is concerned, the principles announced in the following cases are likewise applicable:

Brown-Forman Co. v. Kentucky, 217 U.S. 563, 573, 30 S. Ct. 578, 54 L. Ed. 883; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038, 1045-1947; Smith v. Jackson, 103 Tenn. 673, 54 S.W. 981, 47 L.R.A. 416; Willis, Constitutional Laws, p. 312; and Stone v. General Electric Contracts Corp., 193 Miss. 317, 7 So. 2d 811, Coverdale v. Arkansas-Louisiana Pipe Line Co. 303 U.S. 604, 58 S. Ct. 736 L. Ed. 1043; McGoldtrick v. Berwind-White Coal Mining Co., 309 U.S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A.L.R. 876; Oliver Iron Mining Co. v. Lord, 262 U.S. 172, 43 S. Ct. 526, 67 L. Ed. 929."

This tax does not violate the 14th Amendment of the Constitution of the United States or the 14th Amendment of the Constitution of the State of Mississippi. In Craig v. Mills, supra, the Court held:

"The courts cannot require the legislature to specify its reasons for a classification of persons, firms, or corporations for tax purposes, but they should always presume that the legislature acted on legitimate grounds of distinction, if such grounds exist. And

one who assails the classification of a statute "must carry the burden of showing that it is not based on any reasonable basis. It is presumed that the legislature in making discriminations in classifications in statutes bases them on adequate grounds."

In Notgrass Drug Company et al v. State, ex rel Rice, Attorney General, 175 Miss. 358, 165 So. 884, the Court said:

"But the applicant says that the classification and exemptions here provided violate the due process clause of the State Constitution (Section 14), and the equality and due process clause of the State Constitution (Section 14), and the equality and due process clauses of the Fourteenth Amendment to the Federal Constitution.

" 'The principles which govern the decision of this clause are well settled. The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings or occupation. . . The fact that a statute discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction, ... or if any state of facts reasonably can be conceived to sustain it . . . It is not the function of this Court in cases like the present to consider the propriety or justness of the tax to seek for the motives, or to criticize the public policy which prompted the adoption of the legislation. Our duty is to sustain the classification adopted by the Legislature if there are substantial differences between the occupations separately classified. Such differences need not be great.' State Board of Tax Commissioners of Indiana v. Lafayette A. Jackson, 283 U.S. 527, 51 S. Ct. 540, 543, 75 L. Ed. 1248, 73 A.L.R. 1464.

"In imposing the tax here under consideration the Legislature has the right to classify persons and com-

modities subject thereto. 'In its discretion it may tax all, or it may tax one or some, taking care to accord to all in the same class equality of rights.' . . ."

We think the questions involved here are answered in the case of Caskey Baking Co. v. Virginia, 313 U.S. 117, 85 L. Ed. 1223, where the Court said in part:

"In the State courts, and here, the appellant challenged the statute as contravening the commerce clause and the equal protection clause of the federal Constitution. Its position is that it is doing either an interstate business which the State may not burden by imposing a license tax, or in intrastate business as to which the exaction works a forbidden discrimination. We hold both contentions untenable.

"1. While the transportation of bread across the state line is interstate commerce, that is not the activity which is licensed or taxed. The purely local business at peddling is what the Act hits, and irrespective of the source of the goods sold. It is settled that such a statute imposes no burden upon interstate commerce which the Constitution interdicts. The appellant, however, urges that the Act discriminates against interstate commerce by exempting from its operation the privilege of sales by manufacturers paying tax on their capital employed in manufacture in Virginia. It is said that if its baker were situated in Virginia and the appellant would have the benefit of this exemption and, since it is not, the marketing of appellant's goods shipped into the State is the target of a hostile discrimination. But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the state, or buy or procure them from extrastate sources, are alike subject to the Act. The contention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions. . . . As the court below points out, were it not for Sec. 192b, such peddlers would be the only vendors in Virginia to escape some form of taxation.

"Peddlers at wholesale are not entitled to be licensed

and taxed on the same basis as other vendors, as respects either form or amount. As we have repeatedly held, the equal protection clause of the Fourteenth Amendment does not prevent a State from classifying business for taxation or impose any iron rule of equality. Some occupations may be taxed though others are not. Some may be taxed one rate, others at a different rate. Classification is not discrimination. It is enough that those in the same class are treated with equality. This is true here."

Reversed and Judgment Entered here for Appellant.

Per Curiam. The above opinion is adopted as the opinion of the Court, and for the reasons therein indicated, the judgment of the court below is reversed and judgment entered here for appellant.

APPENDIX 2

Section 45, Chapter 138, Mississippi Laws of 1944.

Upon each person doing business as a transient vendor, or dealer, as defined in this section, and upon which a privilege tax is not specifically imposed by another section of this act, a tax for each county according to the following schedules:

(a) Upon each transient vendor, or dealer of candies, peanuts, salted or roasted nuts, ice cream or ice cream products, or any other confection	$10.00
(b) Upon each transient vendor, or dealer of spectacles	$25.00
(c) Upon each transient vendor, or dealer of fish, oysters, or other sea foods (except a fisherman selling his own catch)	$10.00
(d) Upon each transient vendor, or dealer of batteries of motor vehicles	$15.00
(e) Upon each transient vendor or dealer of radios, phonographs, phonograph records, pianos or other musical instruments	$20.00

(f) Upon each transient vendor, or dealer of patent, proprietary, secret or trademarked medicines, or nostrums, or ordinary household remedies, cosmetics, flavoring extracts, condiments, sauces and spices, when sold by methods other than described in (x) $25.00

(g) Upon each transient vendor, or dealer of gasoline, kerosene, lubricating oil, or other petroleum products $25.00

Provided that the provisions of this section shall not apply to transient vendors, or their agents, or representatives, in the sale or delivery of gasoline, oil, or similar petroleum products when drawn, conveyed and distributed from a stock maintained at a warehouse, oil depot, distribution station, or established place of business in this state, upon which has been paid all privilege taxes required.

(h) Upon each transient vendor or dealer of coffee, tea, flavoring extracts, condiments, sauces or spices, when such transient vendor sells at wholesale to retail dealers only, for each county $25.00

(i) Upon each transient vendor, or dealer of coffee, tea, flavoring extracts, condiments, sauces or spices, when such transient vendor sells at retail to consumers, for each county $50.00

Provided, further, that a dealer or transient vendor who sells to both consumers and retailers, shall be liable for the $50.00 tax.

(j) Upon each transient vendor, or dealer of dry goods, including ready-to-wear clothes, bed spreads, table cloths, etc., small rugs, or other small articles of furniture $25.00

(k) Upon each transient vendor, or dealer of household or kitchen utensils, brooms, pots, pans, dishes, knives, forks, spoons, or small hardware such as rakes, hoes, or hand garden tools $50.00

(l) Upon each transient vendor, or dealer of motor vehicle accessories, motor vehicle parts or motor vehicle tires $10.00

(m) Upon each transient vendor, or dealer in anthracite or bituminous coal or coke $100.00

(n) Upon each transient vendor or dealer of bread, rolls, cakes, pies or other bakery products, except those acting for a bakery duly licensed in this state, in each county $50.00

(o) Upon each transient vendor, or dealer of cigarettes, cigars, or other tobaccos $50.00

(p) Upon each transient vendor, or dealer of raw furs $50.00

(q) Upon each transient vendor or dealer in jewelry $50.00

(r) Upon each transient vendor or dealer of soda water, coca-cola, pepsi-cola, chero-cola, ginger ale, grape and other fruit juices, or imitations thereof, carbonated or other beverages, or like preparations commonly known as soft drinks, acting for a person not licensed in this state, in each county $100.00

(s) Upon each transient vendor, or dealer engaged in the business of renting or leasing towels, pillow cases, sheets, bed spreads, or other similar articles, not licensed in this state, in each county $50.00

(t) Upon each person soliciting business for a laundry not licensed in this state as such, in each county $50.00

(u) Upon each transient vendor, or dealer of a general line of goods, wares and merchandise usually carried for sale in a general mercantile store, upon each truck operated whereon general merchandise is carried, in each county $85.00

Provided that where a general line of merchandise is carried, the several taxes levied herein on specific articles or classes of merchandise shall not apply.

(v) Upon each transient vendor, or dealer of fruits, vegetables or other produce, in each county $50.00

Provided, however, that when perishable fruits and vegetables are sold from a plant, warehouse, or built-in refrigeration plant, situated in this state, assessed at not less than $3,000.00 upon which a proper tax has been, or is being paid, the tax imposed upon a transient vendor, dealer or salesman of such perishable fruits and vegetables shall then be $10.00 for each county.

(w) Upon each transient vendor, or dealer of any goods, wares or merchandise not elsewhere specifically taxed in each county $20.00

(x) Upon each transient vendor, or dealer of patent, proprietary, secret, or trademarked medicines, or nostrums by whatever name called, and whether or not such medicines are sold or disposed of in or through the store of a druggist or merchant, when sold, advertised, offered for sale, or traded by harangue, or through or by means of minstrels, exhibitions, attractions, shows, or amusements in any form, in each county $250.00

Provided that each natural person doing business as a transient vendor, or dealer traveling on

foot shall pay one-fifth (1/5) of the amount set out in the above schedule.

(y) provided however, that where any person subject to the payment of the tax imposed in this section, makes use of more than one vehicle in carrying on such business, the tax herein imposed shall be paid on each vehicle used in carrying on such business.

APPENDIX 3

Section 110, Chapter 137 Mississippi Laws of 1944.
Appendix 2 to Statement of jurisdiction.
Upon each person operating a laundry other than a hand laundry, as follows:

In municipalities of class 1	$120.00
In municipalities of class 2	$ 80.00
In municipalities of classes 3 and 4	$ 60.00
In municipalities of classes 5, 6, 7 and elsewhere in the county	$ 32.00
Upon each truck or other vehicle for such laundry in a municipality other than where the laundry is located	$ 8.00

APPENDIX 4

Mr. E. R. Prenshaw, Chief
License and Tobacco Tax Division
State Tax Commission
Jackson, Mississippi

Dear sir:

Under date of August 31st, I have your inquiry as to the amount of privilege tax levied by the privilege Tax Act of 1940 on agents of a Laundry located outside of the State of Mississippi when the agents are soliciting laundry in the State of Mississippi.

Opinion

Section 123, Privilege Tax of 1940, levies a privilege tax "Upon each person operating a laundry other than a hand laundry, as follows":

The tax then levied graduated in amount according to the population of the municipality in which the laundry was located. Said Section then levies a tax "upon each agent for such laundry in a municipality other than where the laundry is located, $8.00."

Section 221 of said act levies a privilege tax upon each person doing business as a transient vendor or dealer. The term "transient vendor" is defined.

Paragraph (t) of said section levies a privilege tax as follows: "Upon each person soliciting business for a laundry not licensed in said state as such, in each county, $50.00".

The definition of a transient vendor or dealer as set out in said section is not broad enough to cover a person soliciting for a laundry and it is rather uncertain as to whether this tax would be valid at all.

The law is well settled that a state cannot by levying a tax, discriminate between citizens, products or businesses carried on in other states. It is true that the tax levied by Paragraph (t) is not specifically limited to an agent of a laundry located outside of the state. However, all laundries located within the state are required to pay a tax under the provisions of Section 123 and it could not apply to a laundry located in the state. Unless an out of state laundry is permitted to pay the tax levied by Section 123, and pay the tax levied on its agents by said section, it is clear that the provisions of said Paragraph (t) would discriminate against the out of state laundries, and for this reason said paragraph (t) would be invalid and unconstitutional.

It further appears that the tax levied by said Section 221 is only levied on transient vendors or dealers who are not specifically taxed by another section. Said Section 123 specifically taxes the agents of laundries, whether operating within this state or without this state.

I therefore advise that where a laundry is located outside of the state and sends its agents into the state to solicit laundry, the laundry could pay the tax on laundries as is levied by Section 123 and on its agents under the provisions of said section, in which event it would not be liable for the taxes levied by Section 221 (t). If the out of state laundry does not pay the tax levied on laundries under the provisions of Section 123, then it would be liable for the tax levied on its agents by said Section 221 (t).

Biennial Report of the Attorney General 1939-41, page 92.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION

AMENDED STATEMENT OF JURISDICTION

At the time the original statement of jurisdiction was filed the case had not been officially reported and will now be found, *Stone, Chairman State Tax Commission* v. *Memphis Steam Laundry Cleaner, Inc.*, 53 So. (2d) 89.

Since filing the original statement of jurisdiction, our attention has been directed to the case of *Bread* v. *City of Alexandria*, decided June 4, 1951, reported L. ed, Advance Opinions 95, p. 838. Notwithstanding the differences of opinion expressed by the members of the Court in that case, the dissenting opinion of Mr. Chief Justice Vinson and Mr. Associate Justice Douglas is entirely applicable in this case. The following language was used:

> "At least since the decision in Robbins v. Shelby County Taxing Dist. 120 U. S. 489, 497, 30 L. ed. 694, 697, 7 S. Ct. 592, (1887) this Court has regarded the

process of soliciting orders for goods to be shipped across state lines as being interstate commerce as much as the transportation itself. Under the line of cases following this principle, reexamined and reaffirmed in Nippert v. Richmond, 327 U. S. 416, 90 L. ed. 760, 66 S. Ct. 586 162 A. L. R. 844 (1946), the process of solicitation for interstate commerce cannot be subjected to taxes, licenses, or bonding requirements that in their practical operation discriminate against or unduly burden interstate commerce. The Court does not today purport to overrule this line of decisions. And it acknowledges, as it must, that the Court has sharply distinguished the process of solicitation of interstate business from the essentially local retailing operations of hawking and peddling. See Wagner v. Covington, 251 U. S. 95, 103, 14, 64 L. ed. 157, 167, 168, 40 S. Ct. 93 (1919) and cases cited therein. Nor does the opinion dispute that this ordinance has a severe economic impact upon the substantial interstate business of appellant's employer, as well as the entire magazine industry which derives 50% to 60% of its annual subscription circulation from the very type of solicitation prohibited by this ordinance. I disagree with the Court in its holding that an ordinance imposing a "blanket prohibition" can be sustained under the Commerce Clause as mere regulation.

Congress is given the power 'to regulate Commerce . . . among the several states' U. S. Const. Art. 1 Sec. 8 Cl. 3. The doctrine of Cooley v. Port Wardens (U. S.) 12 How 299, 13 L. ed. 996 (1851) permits a state to exercise its police powers in a manner impinging upon interstate commerce only where the subject of regulation is essentially local and then only when there is no discrimination against or undue burden on interstate commerce. This is an approach grounded in the practical, an approach which imposes upon this Court the 'duty to determine whether the statute (or ordinance) under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce'. Best & Co. v. Maxwell, 311 U. S.

454, 455, 456, 85 L. ed. 275 277, 61 S. Ct. 334 (1940). That this ordinance, on its face, professes to protect the home does not relieve us of our duty to weigh the practical effect of the ordinance upon interstate commerce. Lack of discrimination on its face has not heretofore been regarded as sufficient to sustain an ordinance without inquiry into its practical effects upon interstate commerce. E. g., Dean Milk Co. v. Madison 340 U. S. 349, 354, ante, 228, 230, 71 S. Ct. 295 (1951) (prohibition against sale of milk pasteurized more than five miles from city): Real Silk Hosiery Mills v. Portland, 268 U. S. 325, 336, 69 L. ed. 982, 985, 45 S. Ct. 525 (1925) (Requirement that solicitors file bond) Minnesota v. Barber, 136 U. S. 313, 34 L. ed. 455, 10 S. Ct. 862 (1890) Statute requiring inspection of meat within state).

In passing upon other ordinances affecting solicitors, this Court has not hesitated in noting the economic fact that the " 'real competitors' of (solicitors) are, among others, the local retail merchants". Nippert v. Richmond, supra (327 U. S. 433, 90 L. ed. 770, 66 S. Ct. 586, 162 A. L. R. 844) citing Best & Co. v. Maxwell, 311 U. S. 454, 85 L. ed. 275, 61 S. Ct. 334, supra. See also Robbins v. Shelby County Taxing Dist. supra (120 U. S. at 498, 30 L. ed. 697, 7 S. Ct. 592). The court acknowledges 'effective competition' among solicitors and the local retail merchants, ante, p. 841, but is deliberate in its refusal to appraise the practical effect of this ordinance as a deterrent to interstate commerce, id. p. 847. I think it plain that a 'blanket prohibition' upon appellant's solicitation discriminates against and unduly burdens interstate commerce in favoring local retail merchants. 'Whether or not it was so intended, those are its necessary effects'. Nippert v. Richmond, supra (327 IS at 434, 90 L. Ed. 770, 66 S. Ct. 586, 162 A. L. R. 884). The fact that this ordinance exempts solicitation by the essentially local purveyors of farm products shows that local economic interests are relieved of the burdensome effects of the ordinance. No one doubts that protection of the

home is a proper subject of legislation, but that end can be served without prohibiting interstate commerce. Our prior decisions cannot be avoided by limiting their authority to the limited categories of tax and license. On the contrary, we must guard against state action which 'in any form or under any guise, directly burden(s) the prosecution of interstate business' Baldwin v. G. A. F. Seelig, Inc. 294, U. S. 511, 522, 79 L. Ed. 1032, 1037, 55 S. Ct. 497, (1935) citing International Textbook Co. v. Pigg, 217 U. S. 91, 112, 54 L. Ed. 678, 687, 30 S. Ct. 481, 27 LRA NS 493, 18 Ann. Cas. 1103 (1910). See also H. P. Hood & Sons v. Du Mond 336 U. S. 525, 93 L. Ed. 865, 69 S. Ct. 657 (1949)".

The statutes involved in this case are not regulatory measures; the statutes, however, are passed for the purpose of raising revenue. Neither is a tax levied in lieu of an ad valorem tax. The language used by the Court in *Spector Motor Service, Inc.* v. *O'Connor*, decided March 26, 1951, reported 94 L. ed. Advance Sheets, 435, is entirely applicable. The Court used the following language:

> "The objection to its validity does not rest on a claim that it places an unduly heavy burden on interstate commerce in return for protection given by the State. The tax is not levied as compensation for the use of highways or collected in lieu of an ad valorem property tax. Those bases of taxation have been disclaimed by the highest court of the taxing state. It is not a fee for an inspection or a tax on sales or use. It is a 'tax or excise' placed unequivocally upon the corporation's franchise for the privilege of carrying on exclusively interstate transportation in the State".

The Supreme Court of Mississippi did not hold that the tax was a lieu tax and that a non-resident laundry would not be subject to an ad valorem tax if it owned property situated within the State. The Court is drawing a classification based upon the theory that a domestic

corporation would own property in the state and would be, therefore, subject to ad valorem tax; that the appellant is a foreign corporation, as the record will disclose, and owned no property in the State of Mississippi, and therefore, would not be subject to ad valorem taxes in the State of Mississippi. The mere fact, however, that the appellant owned no property located in the State of Mississippi and therefore paid no ad valorem tax would not justify the imposition of a privilege tax for the transaction of interstate commerce.

Under Section 9744, 1942 Code, all property, whether real or personal in the State of Mississippi, upon the 1st day of January of each year is subject to ad valorem taxes. A copy thereof is made Appendix 1 to this amendment.

There is nothing in the statute involved exempting the appellant from liability for such ad valorem taxes as it owned no property within the state upon the first day of January of any year. We desire to lay emphasis upon the discrimination; a truck serving a domestic laundry would be subject only to an $8.00 per annum tax in each county, which the appellant has paid, while upon the other hand, the appellant soliciting for its laundry situated out of the state is required to pay $50.00 upon each truck.

We respectfully submit that the judgment of the Supreme Court of Mississippi should be reversed and that of the Circuit Court, First Judicial District, Hinds County, Mississippi, affirmed.

Respectfully submitted,

W. H. WATKINS,

Attorneys for appellant, Memphis Steam Laundry Cleaner, Inc.

I, J. H. Sumrall, general counsel for the State Tax Commission, appellee in the above entitled cause, acknowledge

receipt of copy of the above and foregoing amendment to statement of jurisdiction.

This 29th day of August 1951.

J. H. SUMRALL,
General Counsel
State Tax Commission.

Sec. 9744. Taxes, a lien, from what date.—Taxes, State, county, and municipal, assessed upon lands or personal property, shall bind the same, and be entitled to preference over all judgments, executions, incumbrances, or liens, whensoever created; and all taxes assessed shall be a lien upon and bind the property assessed, from the first day of January of the year in which the assessment shall be made; and no property shall be exempt from distress and sale for taxes. And it shall not be necessary to the validity of an assessment, or of a sale of land for taxes, that it shall be assessed to its true owner; but the taxes shall be a charge on the land or personal property taxed, and the sale shall be a proceeding against the thing sold, and shall vest title in the purchaser, without regard to who may own the land or other property when assessed or when sold, or whether wrongfully assessed, either to a person, or to the State, or any county, city, town, or village, or subdivision of either. Provided, however, that the lien for municipal taxes shall be secondary and subordinate to the lien for State and county taxes.